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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,700	11/21/2001	Shinpei Okajima	SHM-98-005-5	3833

7590 11/19/2002

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/001,700	Okajima et al.
	Examiner Vanaman	Art Unit 3618
		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on Aug 8, 2002
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 48-72 and 145-147 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 145-147 is/are allowed.
- 6)  Claim(s) 48-50 and 58-62 is/are rejected.
- 7)  Claim(s) 51-57 and 63-72 is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

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### **Status of Application**

1. Applicant's request for reconsideration, labeled "Amendment", filed August 8, 2002, has been entered in the application. Claims 48-72 and 145-147 remain pending in the application.

### **Claim Rejections - 35 USC § 103**

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The indicated allowability of claims 49 and 50 is withdrawn in view of the reference to Peyre, not previously applied by the examiner due to an error in interpretation. Rejections based on the reference to Peyre follow.

4. Claims 48, 49, 50, 58, 59, 60, 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peyre (US 5,116,074, cited by applicant). Peyre teaches a binding mechanism for connecting a boot (25), having a cleat (26), to a board (1) including a front body (6) connectable to the board and including a cleat receiving opening (28) which includes a tapered first face (upper wall tapering towards the center, solid line, figure 1) a tapered second face (lower wall tapering towards the center, phantom, figure 1) and a retaining face (underside of 28 between the upper and lower tapered walls), formed as a curved bar which extends from the bottom of the upper wall face to the top of the lower wall face, as broadly claimed; a rear body (7) connectable to the board, a latch (23) pivotally connected to the rear body (through a pivot axle 22) and including a notch (underside of 21) which engages a rear tab of a cleat (26), and a spring (14, 14) connected to the rear body which biases the latch to an engaged position (see figure 2-- note that the spring biases 7 forwardly, causing head 19, mounted on sliding shaft 18, and latch face portion 20 to engage, resulting in the latch being urged to the engaged position); a fixing plate (2) for connecting the front and rear bodies to the board (1). The reference of Peyre fails to teach the fixing plate as having longitudinally oriented engagement apertures for allowing the plate to be fixed to the board. The use of apertures and threaded fasteners is a very old and well known means for attaching binding elements to gliding boards, and as such it would have

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been obvious to one of ordinary skill in the art at the time of the invention to use a threaded fastener through an aperture in the plate for the purpose of connecting the plate to the board; elongated apertures allowing adjustment of a position attachment are similarly well known, and it would have been obvious to one of ordinary skill in the art at the time of the invention to make the apertures elongated for the purpose of adjusting the positioning of the plate with respect to the board.

*Regarding the Intended use of the binding on a snowboard:*

The reference of Peyre fails to explicitly teach the binding as being adapted to connect a boot to a snowboard. It is well established that ski bindings may be used in certain snowboard environments, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the binding taught by Peyre to be used to connect a boot to a snowboard, further, recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

#### **Allowable Subject Matter**

5. Claims 51-57 and 63-72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 145-147 are allowed.

#### **Response to Arguments**

7. Applicant's arguments, filed in the Request for Reconsideration, have been carefully considered and are persuasive. The previously set forth rejections utilizing the reference to Raines as a base reference have been withdrawn. The examiner apologizes for failing to interpret and

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apply the reference of Peyre, cited in the Information Disclosure Statement (at page 3 of applicant's modified PTO-1449 form) against the claims previously.

### Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wittmann et al. (US 4,436,322), and Spademan (US 4,465,295) teach bindings of pertinence.

9. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 3618.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is (703) 308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Assistant Commissioner for Patents  
Washington, DC 20231

or faxed to :

(703) 305-3597 or 305-7687 (for formal communications intended for entry;  
informal or draft communications may be faxed to the same number but should be  
clearly labeled "UNOFFICIAL" or "DRAFT")

The Office has also established electronic fax servers for Technology Center 3600 as follows:

703-872-9326 (Official communications)  
703-872-9327 (Official After Final communications)  
703-872-9325 (Customer Service)

F. VANAMAN  
Primary Examiner  
Art Unit 3618

F. Vanaman  
November 14, 2002

